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LETTER

To the HONOURABLE

Sir Edmund Isbam, 5

AND

Thomas Cartwright, Esq;

KNIGHTS of the SHIRE,

AND

The Rest of the GENTLEMEN of the
County of *Northampton.*

To the revd Mr Knail



1746

Northampton 4. 25.

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L E T T E R

To the HONOURABLE

Sir Edmund Isham,

A N D

Thomas Cartwright, Esq;

KNIGHTS of the SHIRE,

A N D

The Rest of the GENTLEMEN of the County of
NORTHAMPTON,

O N

The Rev. Dr. *WILCOX,*
MASTER of *CLARE-HALL,*

His having taken away the PROPRIETY and the RIGHT of
Those Born in the said County to Mr. *Freeman's*
Foundation of TWO FELLOWSHIPS and
EIGHT SCHOLARSHIPS in the said
College.

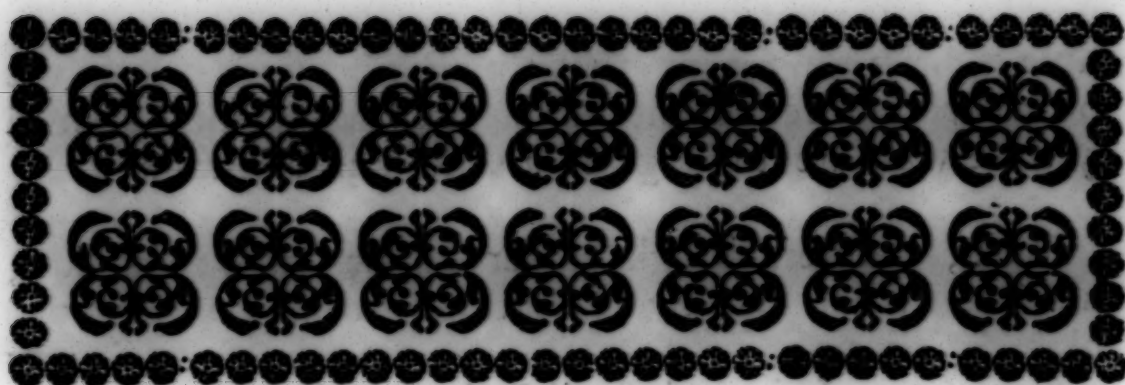
W I T H A

SUMMARY of the CASE

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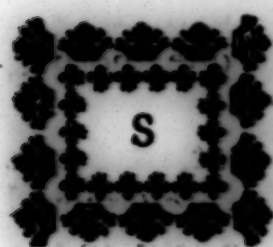
P O S T S C R I P T.

Printed for the Author, in the Year M.DCC.XLVI.



*A LETTER to the Honourable Sir
Edmund Isham, and Thomas
Cartwright, Esq; Knights of the
Shire, and the other Gentlemen of
the County of Northampton.*

GENTLEMEN,



INCE Mr. Freeman's Will has been brought to light, there can be no doubt about the Absolute Propriety of his Foundation of two Fellowships and eight Scholarships in *Clare-Hall*, and the absolute Preference of those born in the County of *Northampton*, next after his Kinsmen.

The Knowledge I had of the College, by having been Fellow of it, made me sure of this from the very Beginning of the Dispute, tho' I did not assert it at first, because my Son's Case did not require me to do it, and I was very sensible that the pretended Judgment of the College to the con-

trary, which the Sound of a few Words something favoured, would be a Weight too great to be removed, till the Matter came to be examined into with that Exactness, which is not to be expected from many Persons, but which must be used by those who are to judge of a Case, and determine it.

It was, however, thought proper to shew, in the mean time, that " as Fit and Worthy as Others as shall be Competitors," might signify no more than, as Others of the same County or Counties. It is against all Rules to prove a Negative, that no Others could be intended. This could only be done, by shewing the Absurdities which would follow from it; by Arguments drawn from the Connection and Construction of the Words, the Circumstances of the Thing, and the Practice of the College, which it was time enough to consider, when the Cause came to an Hearing, and would hardly be much minded or attended to till that Time. But these Proofs are now all needless; the Words of the Will are clear and certain; the Clause in the Covenants is to *save the Mind and true Intent of the Founder*, as expressed in Them; what therefore before appeared only doubtful in the Covenant, must be understood consistently with the Will itself, for the Covenants and the Will cannot be contrary to one another.

The Case itself being so very plain and evident, it seems to follow from hence, that the Master of *Clare-Hall* would not have ventured to have taken away this Propriety in the manner He has done, but upon the Presumption that no private single Person would be at the Pains and Expence He knew He could put him to, to recover this Right; taking it for granted at the same time, that those whose Right it was in common, would give themselves no Trouble about it.

The Persuasion I had that He acted upon this Principle, made me resolve to try how far it would go, and if the
Master

Master of *Clare-Hall* shall be found to have judged rightly in this Matter, that no Person will concern himself in any thing but what He is personally interested in, in all probability there will soon be an End put to all common Rights, which are seldom so valuable as to make it worth a single Person's while to contend for, and the Unreasonableness of doing it will be always a good Argument against it.

I have, perhaps, less personal Interest in this Matter than any one Man who has a Family born in the County, for I have been long determined, that if my Son should recover his Right to this Fellowship, He should take it, only to keep it, till He could resign it to any Countryman of his own. And as to any future Prospects in this College, where some of my Name, and more of my Relations have been Fellows or Members of it, for near a Century and half, no such must ever expect any Favour, they will hardly ever ask it, and are less likely to have it.

I have already received from You, Gentlemen, all the personal Regard I could or would desire; for You have believed I would not impose upon You. As to any thing else, I shall not think myself obliged or disobliged by your undertaking this Cause, or neglecting it. All the Interest I can pretend to have in You, is my having taken a great deal of Pains, which You may make use of for the Good of the County. There is, perhaps, no one who could have made this Matter so clear to You as I have done, the Knowledge I had of the College, has enabled me to do this better than another without this Knowledge could have done, tho' I doubt not another with the same Knowledge, would have done it much better, or at least with less Trouble to himself. The Pains I have taken shall not be pleaded to You, for they may not have so much Credit done them, as to be ascribed to a Public Spirit, and may rather be attributed to private Interest or

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Indignation;

Indignation ; the first of these has indeed been long at an end, but the latter must be allowed to have had its Influence ; but it is hoped no more than it ought to have. But whatever Principle the Pains and Expence I have been at may proceed from, it is certain, they may be applied to the Advantage of the County.

I shall put the Matter upon the Principle of Advantage only, and, if Gentlemen will pardon the Familiarity of the Instance, I would ask whether if 100 *l. per Annum* given for a Plate to be run for at *Northampton*, had thus been secreted, concealed, and evaded, or perhaps given away to a Town in another County, and was so plainly proved as has been done in the present Case of Mr. *Freeman's* Foundation of Fellowships and Scholarships ; I would ask whether in this Case the Gentlemen would not unite to recover such a Plate ? This would be only for encouraging a good Breed of Horses : But Mr. *Freeman's* Foundation is for the Improvement of our Breed of Men, which is surely of incomparably more Advantage to the County.

I hear it is said every where, the Case is plain, the Right may easily be recovered, it is a Shame it should be taken away, it is a Shame such a Benefaction should be lost to the County. I have now, Gentlemen, taken all the Care I can to acquit myself of any Share in this Shame, and if I shall only have born my Testimony against Injustice and Oppression, and have taken care to give no Encouragement to them, by a mean servile Submission, in hopes of future Favour from the College, or to avoid some Pains and Expence, I shall not repent of them, nor of the Charge of near 20 *l.* in laying the Case before those to whom I think it belongs.

I am, GENTLEMEN,

Your most obedient, humble Servant,

JOHN MAPLETOFT.

P O S T S C R I P T.

SINCE this Letter may come into the Hands of those who have not seen the Words of the Will or the Clause of the Covenants, it is thought proper to add them both here.

The Words of the Will.

----- Item, I will, that the Sum of 2000 l. be lay'd forth by my Executors for the purchasing one hundred Pounds Lands of Inheritance, the Rents and Profits of which said one hundred Pounds Lands per Annum shall be employ'd and distributed towards the Relief and Maintenance of ten poor Scholars in the University of Cambridge, at or in the House or College call'd Clare-Hall in the said University for ever, viz. To two Fellows there to be plac'd by my Foundation the Sum of twenty-five Pounds a-piece, and to eight Scholars the Sum of five Pounds a-piece a Year; my Kinsmen, if any be, to be there first preferr'd, and next to them those that are born within the County of Northampton, and next to them those that are born within the County of Lincoln, that shall be fyt for the same. The farther Perfecting whereof I leave to my Executors, charging them, as they will answer before God, that they see the same finish'd within one Year next after my Decease.-----

The Clause of the Covenants.

----- Saving always, that, according to the Mind and true Intent of the said John Freeman, express'd in his Last Will and Testament, they the said Master, Fellows, and Scholars, shall, in such their Nominations and Elections, principally

pally respect such as are of the Blood and Kindred of the said John Freeman to be first and before all others preferr'd to such of the two Fellowships, eight Scholarships, or two poor Scholarships, respectively, as shall hereafter happen to be void; if any of the Kindred, or Blood, of the said John Freeman shall be fit for the said Fellowships or Scholarships respectively at the Time of the Vacance of the same. Then, in the next Place, those are to be preferr'd into the said Fellowships, &c. which are or shall be born in the County of Northampton, and, in the third Place, those that are or shall be born in the County of Lincoln; the Parties born, or to be born, in either of those two last mention'd Counties, being found as fit and worthy as others, as shall be Competitors with them, for the said Fellowships.

That the Covenants are perfectly conformable to the Words of the Will there is no Doubt in the Case of the Blood and Kindred, neither ought there to be any Doubt of their being so in the Case of the County Men. Those born in *Northamptonshire* are distinctly and absolutely preferred; and after them, those born in *Lincolnshire*. As to the Words "the Parties born or to be born in either of those two last mentioned Counties being found as Fit and Worthy as others as shall be Competitors with them;" these Words ought to create no Difficulty, for Parties are some certain Persons, "the Parties that are or shall be born in either of the two Counties," are the Persons in every Election of either one of the two Counties chosen Fellows or Scholars; "being found as Fit and Worthy as others as shall be Competitors with them," is, found as Fit and Worthy as other Parties; for the Substantive *Parties*, just before mentioned, and not Persons not at all mentioned, is to be understood by others, *i. e.* other Parties, but Parties are some certain Persons, who can be no others than those born in either of the two Counties to be preferred into these Fellowships Competitors with

with them chosen in every Election. The Parties chosen are to be as Fit and Worthy as the Parties not chosen, Competitors with them who are chosen. But as the Parties chosen, may be of either one of the two Counties, so the other Parties Competitors with them, must be of the same County, because Parties are not any Persons, but some certain Persons, and Parties of a County and other Parties are like Persons of the same County.

This is so clear and evident, that it is hardly credible that those who knew the Statute of the College, by which no one can be a Competitor, who is not made so by the express Act and Deed of a Fellow in writing, it may be 28 Days before the Election, and who knew the Practice of the College of making those of all Counties, Competitors together for all other Incorporated Fellowships; but notwithstanding for 100 Years of never making any one not born in either of the two Counties, Competitor with one so born for these Fellowships; it is hardly credible, I say, that those who knew these Things and the Will itself, could mistake in this Matter. And it being thus incredible that they should mistake, and still more incredible that a College should knowingly act thus unjustly, is the true Reason of some very worthy Persons doubting about the Meaning of the Word *Others*, before the Will was brought to light, which is a great Proof of their good Disposition, and it is pity they should be so abused.

It need only be added to make this a Summary of the Case, that about 20 Years ago Mr. *Falkner*, born in *Lincolnshire*, was first denied the Propriety of this Foundation, without any Pretence of his personal Unfitness or Unworthiness, but upon Pretence of his having only a Preference *Cæteris paribus*, and that One of another County was more Fit and more Worthy. That for 18 Years after, not one of either of the two Counties was ever made a Competitor

for one of these Fellowships, as is believed, but certainly in seven Elections not one chosen. That now lately, which has given Occasion to this Complaint, one born in the County of *Northampton* has been rejected, by one born in *Bedfordshire* being preferred before him, of which *Northamptonshire* Scholar's Fitness and Worthiness to be a Fellow, there is so little doubt, that it is made the greatest Matter of Accusation against him, that one who might have been so sure of another Fellowship, should insist so strenuously on his Right to this Propriety.

The Chancellor, or Vice Chancellor for the Time being, is the undoubted Visitor of this College; the latter has frequently acted as such; but all Applications with an Offer of a Bond under the Penalty of 500 *l.* to three successive Vice Chancellors for the Time being to support their Jurisdiction, have proved to no purpose, tho' not one of them has been pleased to determine against his Jurisdiction. The first applied to, was the Rev. Doctor *George*, Provost of *King's-College*, but He frankly declared, He would not act unless compelled by Law. The second was the Rev. Mr. *Prescott*, Master of *Catharine-Hall*, who after keeping the Statute and Case by him for 5 or 6 Months, without taking any Notice of them, at the Expiration of his Office returned them. The present Vice Chancellor, the Rev. Doctor *Rooke*, Master of *Christ-College*, doubts of his Power, because He has not seen the Statutes, but yet will not so much as desire the Master of *Clare-Hall*, to shew them to Him.

It is now upon the whole proposed as a Question to the Learned, whether any Instance can be given, of any Religious and Learned Society among the *Roman Catholics*, even that of the *Jesuits* not excepted, having been guilty of a greater Abuse of their own Understanding, or of imposing more egregiously on the Understanding of others, by a false Interpretation

Interpretation of any Passage in Scripture, than the Master and Fellows of *Clare-Hall* seem to have been guilty of, in interpreting the Mind and true Intent of this Founder, to be no more than to give those born in the two Counties of *Northampton* and *Lincoln*, a Preference before any other Persons *Cæteris paribus*, which has been the only Pretence for taking away this Benefaction, from those to whom it was given. If this Interpretation shall appear to the Reader to be as vain as it has been here represented to be, He will find it hard to account for that invincible Ignorance which alone can acquit the Master of Injustice, Oppression, and Wilful Perjury.

It is further proposed to the Consideration of all, what is to become of Justice, if those entrusted with the Administration of it (who in the present Case, by being upon the Spot, may easily inform themselves of the Truth of these Allegations) will not trouble themselves so much as to consider, whether they are so entrusted or not, unless compelled by Law to do it?

How differently were these Matters apprehended formerly, when the Statutes of the College were made, from what they are now. It is provided in these Statutes that if any Thing *Doubtful or Obscure* shall arise which cannot be terminated or ended by the Master and Fellows, they shall fully, and without Loss of Time, refer it to the Chancellor of the University, or his *Locum Tenens*. But now if the Master and Fellows have the Assurance not to *doubt* of any Thing, and to put Darkeness for Light, and Light for Darkeness, they may terminate or end all Things by themselves, and have not only no need of their Visitor, but defy him to meddle in their Concerns.

The said Chancellor is also impowered by the Statutes, to come to the College uncalled, and visit the Master and Fellows once every Year, if need be, and correct whatever He finds needs Correction in Them, and punish them. But now the Visitor will not come, tho' called and entreated by a Member of the Society or Family of which He is the Head, or, as it were, the Father, tho' the personal Injury done to one of his Family, is no less than what may be, for ought he knows, to his Ruin; what would have been to the Ruin of Dr. *Wilcox*, the present Master, if it had been done to himself, formerly Fellow by Propriety on this very Foundation, and what would have probably made a great Alteration in the State and Condition of the present Visitor, Doctor *Rooke*, Master of *Christ-College*, himself, if it had been done to him; for I have been informed He was fetched from another College, and owes the Fellowship He had in the College, of which He is now Master, to the Propriety of its Foundation.

But besides the personal Injury done to one of the Society and Family, of which the Visitor is the Head, and as it were the Father, the Petition of the Party to the Chancellor of the University, to which the then Sheriff and all the best Gentlemen of the County then present at an Assize adhered, was laid before the Vice Chancellor, as a Proof of the Gentlemen's thinking themselves interested in this Cause.

This is a short Summary of the Case, by which as true a Judgment may be made of it, as by a long and tedious Narrative of all the Circumstances of it, which are but Aggravations, and may easily be imagined, by considering what is likely to happen, when one Side is resolved to do a Thing at all Adventures, and the other endeavours to make the doing of it as difficult and as shameful as He can: Or when a Party endeavours to force a Judge to take Cognizance
of

of a Cause, which He is resolved not to receive. As these Things are only Aggravations, and necessarily lead to personal Reflections, nothing but a Necessity of laying them open would make me willing to do it.

It seems to have been the fatal Mistake of this Master, and these Fellows, and a very dangerous Mistake it is, that these Benefactions are really Donations to themselves, whereas they are in Truth Benefactions to those, for whose Use they are given, and those who are entrusted with them may as legally not give them at all, and keep them to their own Use, as not give them to those the Founder has appointed to have them; and those who are entrusted with them, are accountable for the faithful Discharge of their Trust to Those who are appointed Visitors over them. If this was not so, all charitable Donations would soon be lost and swallowed up by those who are entrusted with them; for who but those who have some Right to them, or those who have a Jurisdiction over the Persons entrusted with them, can call them to an Account for them? If the present Master and Fellows of *Clare-Hall*, had alienated this Benefaction from the Use, as well as from the Persons to whom it was given, as they might as legally have done, who should call them to an Account for it in the present Case, when the Heir of the Founder is unknown? Who should do this but those who have an Interest in the Benefaction, or the Visitor? But if no one can call the Master and Fellows to an Account, or which comes to the same thing, if it cannot be done without an expensive Law-suit, the Fate of all Benefactions to that College, in a short time, may easily be determined.

F I N I S.

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